

## BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

LABOR ASSOCIATION OF WISCONSIN, INC. (SHOREWOOD POLICE ASSOCIATION)

and

VILLAGE OF SHOREWOOD

WERC Case 46, No. 59664, MIA-2384  
Dec. No. 30195-A

### APPEARANCES:

For the Association:

Patrick J. Coraggio and Kevin W. Naylor, Labor Consultants, Labor Association of Wisconsin, Inc., 2835 North Mayfair road, Suite 24, Wauwatosa, WI 53222.

For the Employer:

Davis & Kuelthau, S. C., by Attorneys Roger E. Walsh and Joel S. Aziere, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202.

### ARBITRATION AWARD

The Association has represented a bargaining unit of police officers for many years; the parties' most recent collective bargaining agreement expired on December 31, 2000. On February 8, 2001, the Association filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.77 (3) of the Municipal Employment Relations Act, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order for binding arbitration dated August 13, 2001. The undersigned Arbitrator was appointed by Commission order dated September 10, 2001. A hearing was held in this matter in Shorewood, Wisconsin on January 17, 2002. A transcript was made, both parties filed briefs and reply briefs, and the record was closed on April 12, 2002.

Statutory Criteria to be Considered by Arbitrator  
Section 111.77(6)

- (a) The lawful authority of the municipal employer.
- (b) Stipulations of the parties.

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparisons of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - 1. In public employment in comparable communities.
  - 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

#### The Association's Final Offer

- 1. The tentative agreements reached by the parties.
- 2. ARTICLE IV - SALARY PROVISION Page 4. Modify the wages as follows.
  - Effective 1-1-01 3.25% ATB
  - Effective 1-1-02 3.00% ATB
  - Effective 7-1-02 0.50 %ATB
- 3. ARTICLE XXII - INSURANCE Page 23. Section 22.01, paragraph B. Rewrite lines 9 - 13 to read as follows.
  - “The Village shall pay the cost of health insurance premiums for each regular full-time employee of the police department included under the terms of this contract and covered under a health insurance plan provided by the Village except as follows:
    - Effective 1-1-01, employees shall contribute thirty-five dollars (\$35.00) per month for either the single or family plan.
    - Effective 1-1-02, employees shall contribute forty-five dollars (\$45.00) per month for either the single or family plan.”
- 4. ARTICLE XXII - INSURANCE
  - Effective the month following the Arbitrator's award, the Village may:
    - a) modify the health insurance plan to provide for an increase in the office visit co-pays from \$10.00 to \$20.00.

- b) change prescription co-pays from \$5/10/25 to \$10/15/25.
- c) change the emergency room co-pay from \$75.00 to \$100

5. ARTICLE XXII - INSURANCE

Page 24, paragraph E, lines 18-26. Rewrite as follows:

“E. The Village agrees that if it decides to change the insurance ~~carrier~~ ~~during the term of this agreement~~, it shall notify the Association of its intent to change the ~~carrier~~ **insurance** at least sixty (60) days prior to the intended change if practicable, but not less than thirty (30) days from the intended date of change. The employer agrees that it shall provide the Association with written documentation setting forth the level of benefits of the new program. If the level of benefits is not agreeable to the Association the parties agree to open the contract to negotiate on the new insurance, provided, however, if the Employer changes insurance carriers and the level of benefits are equal to or greater than the existing program, there will be no obligation on the part of the Employer to reopen the contract to negotiate the change.”

6. ARTICLE XXXII - DURATION OF AGREEMENT

Change the dates in Section 32.01 to reflect the commencement date of January 1, 2001 and a termination date of December 31, 2002.

The Employer's Final Offer

The provisions of the 1999-2000 collective bargaining agreement will be continued in a new three year contract to be executed by the parties except as modified by the following:

- 1. Tentative Agreements initialed on 3/12/01.
- 2. ARTICLE XXII - INSURANCE, page 23, Section 22.01, paragraph B. Add the following sentence to paragraph B:  
Effective May 1, 2001, employees shall contribute twenty-five dollars (\$25.00) per month toward the health insurance premium for the single plan and fifty dollars (\$50.00) per month toward the health insurance premium for the family plan
- 3. The following changes will be made to the health insurance policy effective May 1, 2001:  
Change office visit copay from \$10 to \$20  
Change prescription copay from \$5/\$10/\$25 to \$10/\$15/\$25  
Change emergency room copay from \$75 to \$100
- 4. ARTICLE IV - Salary provision, page 4. Modify wages as follows:  
Effective 1/1/01 3.25% ATB  
Effective 1/1/02 3.25% ATB

Effective 1/1/03      3.25% ATB

4.(sic) ARTICLE XXXII - DURATION OF AGREEMENT. change dates in Section 32.01 to "January 1, 2001," "December 31, 2003," and "December 31, 2003."

Note: The parties use different sets of tentative agreements. The March 12, 2001 set incorporated by the Employer includes a third-year improvement in clothing allowance of \$25, and an apparently minor language change, that are absent from the Association's.

### The Parties' Arguments

(The parties' contentions are recorded here in their substance, i.e. stripped of some unusually ill-tempered language.)

### The Association's Position

The Association notes that its final offer includes an increase in the monthly health contribution for participants of 80 percent over two years. The Association contends that this is a more than reasonable accommodation of the Employer's interests but takes account of the employees' preference for an equal contribution between single and family plan participants, unlike the Village's proposal of a 100 percent increase for family participants only. The Association also notes that its proposal delivers retroactivity to January 1, 2001, four months earlier than the Village's offer. With respect to copays, the Association notes that its proposal, like the Employer's, sharply increases employee copayments for office visits and prescription drugs, and contends that some of the features of this plan are harsh compared to the comparables, particularly claiming that use of the emergency room is charged at \$100 even if the person treated is subsequently admitted to hospital, unlike in all other North Shore communities, which charge \$25 to \$50 for emergency room visits. The Association also contends that it has agreed to levels of employee payment for both generic and brand-name drugs that are 50 to 100 percent higher than other North Shore police departments' requirements.

The Association contends that the Village has not reciprocated the Association's willingness to help contain health care costs by giving attention to the Association's concerns over recent erosion in wage rates as compared to other North Shore police departments. The Association notes that the difference between the parties' final offers is less than \$2,000, and argues that the dispute revolves mainly around wages and that arbitrators have frequently given greater weight to settlements in other law-enforcement bargaining units than to internal comparables on this issue. The Association points particularly to a language difference between the statute covering general public employees and that covering police officers. The former contains a specific clause requiring an arbitrator to take into account wages of employees "within the same community", a clause not matched under the statute that applies to police and

fire units. The Association contends that this is particularly relevant because since 1996, the patrol officers in this department have fallen from the fourth place rank (shared with the Village of Whitefish Bay) to being the lowest-paid department on the North Shore, at about 1 percent below the North Shore average. The Association contends that the investigators are still more disadvantaged, earning approximately 3.3 percent below the North Shore average in 2001.

The Association contends that the Village's demand for consistency with its other bargaining units is undercut by the fact that in 2000, the Village registered no objection to collecting \$25 per month as a health-care contribution from single police officers, while single employees covered by the DPW and library bargaining units were only required to pay half that amount. The Association also notes that police officers work a different work schedule than DPW and library employees, do not receive shift premiums, unlike those employees, and receive 11 paid holidays compared to those units' 12. The Association contends that for these reasons, there are already dissimilar benefits across the internal bargaining units. Meanwhile, the Association characterizes other fringe benefits as "average" compared to North Shore police departments generally, citing the uniform allowance, sick leave and health insurance for retirees as slightly above the average, longevity and vacation days as lower than the average of the external comparables, and shift premium and holidays as average. Thus, the Association contends, the Village is not making up for substandard wages with generous benefits.

The Association argues that while it was interested originally in reaching a three-year agreement with the Village, it is now seeking a two-year agreement because it was unable to obtain an agreement with the Village that would help correct the wage disparity with other North Shore departments. In another late change, the Association notes that it added new language concerning health insurance changes, but only in the wake of a unilateral change by the Village which attempted to impose the new levels of employee copayments when there was no agreement in effect for those increases. The Association contends that its proposed modification to paragraph E of Article XX is a direct result.

In its reply brief, the Association takes issue with the Village's characterization of its members, and argues that the Association readily agreed to substantial increases in already-high employee costs of health insurance, while the Village failed to reciprocate in kind with a fair wage increase. The Association objects to the Village's demand for a quid pro quo for the Association's proposals, contending that the key change here is entirely to the benefit of the Employer, in the form of sharply increased levels of employee health contributions and copays. With respect to wages, the Association argues that the Village ignores, in its calculations of hours worked, 16 hours of unpaid training time, as well as the imbalance between 15 daily minutes of briefing time and a yearly total of 24 hours of compensatory time off. The Association recomputes officers' work hours per year by dividing 365 days by six days per cycle; multiplying by four days

worked per cycle; multiplying by 8.25 hours per day; adding the 16 hours of training time; and subtracting the 24 hours of compensatory time, to reach a total of 1999.49 hours. The Association also objects that the Village has miscalculated hours worked by officers in Bayside and Brown Deer, and that both are working 2068 hours. Finally, the Association contends that a two-year agreement more closely represents the settlement that could have been voluntarily agreed upon between the parties, because the parties' wage increases add up to exactly the same amount for the first two years; the effective cost of the Association's split offer is the same 3.25 percent over the course of 2002 as the Village's straight 3.25 percent offer. The Association also notes that only two communities have settled for 2002 and 2003, and that both settled for more than the Association is asking for here.

### The Employer's Position

Like the Association, the Village calculates the total amount separating the parties over the two years for which they both have proposals at well under \$2,000, and recognizes that this is a minimal difference. The Village characterizes the Association's proposal in terms that might be more politely paraphrased as "extremely ambitious for the circumstances" and contends that the key issue is internal comparability and that this clearly supports the Village's offer. With both the DPW and library units settled, on identical terms to the Village's proposal here, the Village contends that there is no reason to consider external comparables, because the obvious need for consistency has been well recognized by arbitrators and it is unjustifiable to give weight to external comparables where any internal pattern exists.

With respect to consistency of health insurance, the Village notes that the two other unions agreed to retroactivity to January 1, 2001 as the effective date of increases in premium contribution and copays, but that when the insurance company informed the Village that retroactivity of this type is difficult to enact, the Village agreed to delay implementation of the increased copays till May 1, 2001 for all employees. The Village notes that the Association does not object of the level of the copays, only to the date; and argues that the Village accommodated the Association's objection to interim changes by indemnifying employees until resolution of this matter, while consistency with the other bargaining units can be restored for practical purposes by selecting the Village's offer. With respect to wage increases, the Village contends that the past history of wage increases shows that the Village has been consistent in its settlements with this bargaining unit as compared to the other internal units. The Village contends that the percentage value of past increases as well as those proposed by the Village for this contract are well in line with settlements in the agreed-upon external comparables, although wages should not be the deciding factor in this case.

The Village argues that the Association's "monthly rates" calculation of relative wages between Shorewood and the other North Shore police departments is misleading because of large differences in the number of a hours worked per year among these

departments. The Village contends that Shorewood officers work only 1952 hours per year, while the comparables work from 2049 to 2080, and that calculating wage rates in hourly terms reveals that Shorewood patrol officers have been consistently at the top of salaries paid in the North Shore, while investigators have been consistently either first or second among the five departments that have them. The Village contends that there is therefore no basis for a catch-up on wages. As to benefits, the Village contends that Shorewood officers also have the highest overall compensation, because their maximum sick leave accumulation is the highest (matched only by Glendale; the next closest has 36 days fewer); their 50 percent sick leave payout upon retirement is well above all others except Glendale; their uniform allowance is the highest; their dental insurance is the best; and their holiday compensation is far above all others because it is paid at time and a half, while all the others are at straight time for the same 11 days. The Village further contends that the CPI supports the Village's offer and that the Village's proposed increase in employee contributions to health premiums is closer to contribution levels in the other police departments than is the Association's proposal, particularly because the cost of family coverage to the employee is at least double that for single coverage in every situation. The Village also contends that the Association was agreeable to the Village's duration and clothing allowance provisions right up until its final offer, including initialing tentative agreements reflecting those provisions. Finally, the Village contends that the Association's health insurance language, newly introduced at the last minute, is unresponsive to the Village's change in copays and contribution levels, which in any event was indemnified to employees promptly. The Village argues that a quid pro quo is called for by such new language, and that the Association has offered none.

In its reply brief, the Village contends that there is no obvious fairness to keeping employee contribution levels the same for single as for family plan participants, because family plan participants receive at least double the value of the benefit, and because widespread practice reveals that virtually everywhere, employers and unions alike recognize that fairness is best expressed by variable costs depending on family status. With respect to the actual costs imposed on employees, the Village offers a correction to the record to demonstrate that the plan actually enacted by the Village waives copayments of emergency room fees if the plan member is admitted to hospital as a result of the emergency. The Village objects to the Association's characterization of its lately changed health insurance language as simply requiring notification, pointing out that on the face of that language, actual bargaining is required if the level of benefits of the new program is not agreeable to the Association and not equal to or greater than the existing program. The Village contends that this is a substantial change in the status quo on the ground that such bargaining is now required only when there is a change of carrier. And with respect to the Association's argument that Section 111.77 differs from the general employee provisions of the interest arbitration statutes in that it contains no specific instruction to an arbitrator to consider wages, hours and conditions of employment of employees in the same community, the Village notes that factor 6(h) is widely understood to include a comparison of wages, hours and conditions

of employment between the bargaining unit in question and employees within the same community, citing well-known arbitrators to this effect. The Village reiterates its contention that the Shorewood officers are far from the low-pay and middling-benefits status described by the Association.

### Discussion

I will first consider the issues separately, and then assess their overall impact in terms of internal and external comparables as well as the other specific statutory criteria.

#### *Clothing allowance*

No clear reason was given as to why the Association withdrew from the tentative agreement on this issue, but the amount in question is trivial. Adding to what is already the richest such benefit among comparable police departments, it becomes a very minor factor in favor of the Employer's offer.

#### *Health insurance*

I find the Association's proposed new health insurance language not well justified in the record, but not particularly significant either. The existing contract language allows the Village to change health insurance carriers provided that the new coverage is "equal or better". The Association's proposal would maintain the "equal or better" standard, but ostensibly applies it more broadly to changes in "insurance" rather than merely "carrier".

But to assume that this change would actually impact management adversely is to assume that the existing language allows management to change insurance levels within the same carrier to some greater degree. That assumption is a tall order, as impliedly admitted by the Village's immediate agreement, as soon as the Association filed a grievance protesting the unilateral 2001 change in co-pays during the pendency of this dispute, to indemnify employees until the dispute was resolved. Even if the Village had not done so, it would be a strained reading of the existing insurance language to argue that the Village was free to substitute inferior insurance provisions as long as it remained with the same carrier. The result is that the Association's proposed new language could arguably be read as providing greater flexibility for management than the existing language — because the Association's language expressly admits at least the possibility of a mid-contract change in insurance levels within the same carrier, while the existing language arguably bars any such change. Consequently, although I agree with the Village that the proposal is not well justified in the record, I do not see any reason to weigh it significantly against the Association.

With respect to the external comparables, the remaining differences between the parties' positions on health insurance do not add up to much. The parties propose the same level of co-pays, which appear unremarkable in terms of the external comparables, while the Village's supplementary exhibit shows that its plan does provide



for waiver of the emergency services copayment if the plan member is then admitted to hospital. Bayside has the same employee contribution levels as the Village's proposal in the first year, with a much higher employee contribution level for 2002 — but as noted below, Bayside appears to have paid for this increase with a substantially higher wage increase than might otherwise have been expected. Brown Deer has variable contributions, with senior employees contributing less than the Association offers here, but junior ones contributing much more.

All four of the other comparable employers, however, are under the State insurance plan, in which employee contribution levels are extremely variable depending on the plan chosen by the employee. Direct comparison to any of these employers is difficult without knowing how many of the employees take which option under that plan, especially because at least one of the options, by definition, involves equal employee "contributions" of zero by both single employees and those with families. Thus if most of the employees in most of these bargaining units have opted for a plan that in any given year is under the "105 percent" level, the Association's proposal would be closer to the average; if they have opted for other plans, the Village's proposal would be closer. While it is worth noting that generally, it is unusual to find the Association's proposed structure of equal contributions by single or family employees, the comparable employers here may actually be the rare exception. (I also note that the Village voluntarily agreed to such a structure for this unit in the last contract.) I therefore ascribe that peculiarity no weight here.

The consequence is that the most that can be said is that both parties' proposals are "in the range" and that there is not enough evidence to find either one more reasonable than the other in terms of the external comparables. The external comparables factor is therefore neutral. But the Association's argument depends heavily on comparisons to external comparables. This, of course, means that in the overall assessment of this issue, the Village's proposal is more reasonable, because the clear pattern of internal settlements supports it. See below for further discussion of the "internal versus external" factors here.

### *Wages*

Here also, the Association's argument depends on the external comparables. The Association strongly asserts that it is disadvantaged in these terms, but I find that the evidence in the record does not bear out this concern. In particular, I agree with the Village that the number of hours actually worked by officers is a critically important variable in assessing relative wages across the external comparables.

The parties, not unexpectedly, do not calculate hours per year of all of the comparables identically. In constructing the table which follows, I have used the monthly rates from Association's Exhibit 501, which appear accurate in terms of the collective bargaining agreements, but I find neither Association's Exhibit 700 nor Village's Exhibit 11 particularly accurate. Specifically, the parties essentially agree on the number of hours

worked by officers in Glendale, Whitefish Bay and Fox Point. In River Hills, the Association's exhibit was changed by stipulation at the hearing to reflect the fact that River Hills changed its work schedule effective February 1, 2001; a calculation from the River Hills contract reveals 2068 hours per year worked from them on. Similarly, I find that Bayside and Brown Deer appear to be working the 2068 hours calculated by the Association, as they have the same schedule, even though for certain purposes their contracts refer to the 2080 hours which the Village has used in its calculation.

The most important number, however, is of course Shorewood's, and here I find the Association's recalculation in its reply brief to be accurate. That number takes into account 16 hours of otherwise unpaid training time, the daily 15 minutes of briefing time, and the 24 hours annual compensatory time off which the contract allows for the briefing time. As the Association argues, an apples-to-apples comparison requires that all hours actually spent working under the direction of the employer be counted; the fact that the 24 hours annual compensatory time off does not fully equate to the briefing time merely becomes one more element in an overall calculation. And as the Association argues, the result of taking all of these elements into account is a total of 1999 hours per working year.

But taking hours actually worked into account changes considerably the wage rank order of these departments:

Department	Hours per Year	Monthly Salary, 2001, top patrol rate	Equivalent Hourly Rate
Shorewood	1999	4126	24.77
Glendale	2074	4215	24.38
Bayside	2068	4166	24.17
Whitefish Bay	2068	4153	24.09
Brown Deer	206 8	4180	24.25
Fox Point	2049	4143	24.26
River Hills	2068	4145	24.05

A similar recalculation for the (much less numerous) investigators produces a similar result:

Department	Hours per Year	Monthly Salary,	Equivalent Hourly
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		2001, top investigator rate	Rate
Shorewood	1999	4352	26.12
Glendale	2074	4690	27.13
Bayside			
Whitefish Bay	2068	4494	26.07
Brown Deer	2068	4453	25.83
Fox Point	2049	4347	25.46
River Hills			

The consequence is that the Association's core argument for preferring external to internal comparables lacks support in the record.

At the same time, the balance of the principal benefits enjoyed by officers on the North Shore also appears favorable to Shorewood. Shorewood does not have a longevity provision, but only three of the seven departments do, and even if this bargaining unit had such a provision, the best of the plans in the other departments would generate about \$120 to \$180 per year for about half the unit, not enough to make a significant impact on the wages shown above. On vacations, out-of-classification pay and shift premium, all taken together, Shorewood is competitive at least. On sick leave, Shorewood has the best combination of maximum accumulation and payout upon retirement, by a significant margin. On holidays, like most of the external comparables, Shorewood has 11 — but as the Village argues, only Shorewood pays time and a half for holidays, a very significant effective increase over the external comparables. And on retiree health benefits, Shorewood again has the best plan compared with the external comparables. In short, the benefits provide no support for the Association's claim to be underpaid relative to external comparables.

#### *Length of agreement*

As the Association notes, there is no settlement pattern for 2002 or 2003 among the external comparables. The Village's proposed increases for those years, however, are far from outlandish, and as noted above, its second-year proposal is better justified than the Association's even in terms of external comparables. The internal comparables, meanwhile, extend through 2003 on the same terms as the Village's proposal here. I find the Village's proposal on length of agreement to be better supported overall.

#### *Internal vs. external comparables*

Because the Association has portrayed this dispute as being fundamentally a contest over the relative value of internal vs. external comparables, this question deserves

separate mention. As the Association argues, there have been many circumstances in which arbitrators have found external comparables to be the controlling factor, particularly when the bargaining unit involved is a protective service bargaining unit with many distinct features that do not have a close correlation to other bargaining units of the same employer. As the Village argues, it is more common for this to occur where the dispute is fundamentally over wages than when it is fundamentally over benefits. But in this particular dispute, the tension between internal and external comparables posited by the Association's arguments is illusory, because the numbers do not support the Association's case even in terms of the external comparables. Thus it is pointless here to delve further into the issue.

*The Statute's Weighing:*

The lawful authority of the employer is not at issue in this proceeding, and the stipulations of the parties do not involve any notable cost or other change factor. The parties' positions are close overall, and the interests and welfare of the public and financial ability of the Village are not significantly differently impacted by the proposals. In comparative terms, the private sector comparison was not argued, and the public sector comparison to other communities favors the Village's offer. The CPI factor slightly favors the Village, and the overall compensation factor significantly favors the Village. Changes during the pendency of the proceeding were not argued. And the "other factors", which here significantly include the internal comparison to other settled bargaining units of the Village, strongly favor the Village's proposal.

Summary

This dispute initially appeared to involve a classic tension between whether parties' offers relating to police officers should be weighed most heavily in terms of other employees of the same employer, or in terms of other employers who have similar police departments. But upon careful review of the officers' terms of employment, no tension exists, because the external comparables are, both specifically in wages and in overall terms, less advantageously compensated than the Village's officers. Meanwhile the Village's offer is strongly supported by the internal comparables, and in all other relevant terms taken together, is closer to the mark than the Association's proposal.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Village of Shorewood shall be included in the 2001-2003 collective bargaining agreement.

Dated at Madison, Wisconsin this 7th day of June, 2002

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator